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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 921 (AKH)

5 NICHOLAS TRUGLIA,

6 Defendant.

Oral Argument

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7
8 New York, N.Y.
February 29, 2024
9 11:14 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: TIMOTHY A. CAPOZZI, ESQ.
Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK INC.

18 Attorneys for Defendant

19 BY: MARK B. GOMBINER, ESQ.
CHRISTOPHER A. FLOOD, ESQ.

20 ALSO PRESENT: PIERCE O'DONNELL, ESQ.

21 ALSO PRESENT: MICHAEL MALEAKA, U.S. Probation Officer

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(Case called)

THE DEPUTY CLERK: Counsel, please state your appearances for the record.

MR. CAPOZZI: Good morning, your Honor. Timothy Capozzi for the United States. With me at counsel table is United States Probation Officer Michael Maleaka.

THE COURT: Good morning.

MR. MALEAKA: Good morning.

MR. GOMBINER: And Mark Gombiner and Christopher Flood, Federal Defenders, for Mr. Truglia. Good morning, Judge.

THE COURT: Good morning.

We've had and we've completed evidence on the problems arising from the failure of Mr. Truglia to give restitution. Since that time, Mr. Gombiner argued that that proceeding was limited to the failure of paying restitution, and whatever adjustment that would require in supervised release. I held the hearing, and the government moved for resentencing. And I gave Mr. Gombiner an opportunity, after the hearing, to bring whatever evidence he felt would be useful with regard to resentencing that had not been fully presented with regard to restitution. There was nothing more added.

Finally, the government has made an order to show cause to punish by contempt. Mr. Gombiner has objected. So before we go to anything else, we should take that motion up.

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1 Mr. Capozzi, would you speak in favor of the motion.

2 MR. CAPOZZI: Your Honor, would you prefer that I stay
3 seated or stand?

4 THE COURT: I prefer you to go to the podium.

5 MR. CAPOZZI: Your Honor, in our most recent papers,
6 we sought both a holding of contempt as well as a resentencing.
7 Your Honor, we did that because they serve different purposes.

8 THE COURT: Sorry?

9 MR. CAPOZZI: They serve different purposes. The
10 contempt will hopefully finally cause the defendant to pay back
11 his victim. Resentencing will help remedy the injustice of his
12 receipt of a sentence that was substantially influenced by his
13 false promise to pay restitution.

14 THE COURT: If I were to grant your motion, the
15 consequence would be civil imprisonment until Mr. Truglia
16 purges this contempt—that is, makes restitution; is that
17 right?

18 MR. CAPOZZI: Correct, or if there comes a time when
19 he establishes to the satisfaction of your Honor that he has
20 taken all reasonable steps available to him to satisfy that
21 obligation.

22 THE COURT: And how does a resentencing play into
23 that?

24 MR. CAPOZZI: Well, your Honor, I think the Court
25 could take different approaches. I think that—

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1 THE COURT: Let's suppose I want to do the contempt as
2 the only effective way of getting Mr. Truglia to pay his debt.
3 What happens to the resentencing?

4 MR. CAPOZZI: I think there is nothing that would
5 prevent the Court from holding in abeyance any final
6 determination on the need for a resentencing to allow some time
7 for the contempt order to play out and see how it proceeds, and
8 if—

9 THE COURT: So, for example, to defer resentencing
10 for, say, six months or such shorter period as is evident from
11 purging the contempt.

12 MR. CAPOZZI: Correct, your Honor.

13 THE COURT: And you've made the motion.

14 MR. CAPOZZI: Correct.

15 THE COURT: And no new facts need to be added to the
16 record; the record is full.

17 MR. CAPOZZI: Correct, your Honor.

18 THE COURT: Okay. Mr. Gombiner.

19 MR. GOMBINER: Well, let me address the suggestion
20 that the Court hold Mr. Truglia in contempt.

21 THE COURT: I recognize your arguments of his good
22 faith, but let's assume that you don't persuade me as to that.
23 So there's really two questions: (1) do you have to add
24 anything for the record; (2) is the remedy appropriate?

25 MR. GOMBINER: Well, Judge, I don't think the remedy

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1 is appropriate because, one, I think Mr. Truglia, for at least
2 the last six months or so, has already been effectively under a
3 contempt order. I mean, back in August of 2023, the Court
4 pretty much explicitly advised Mr. Truglia that if he paid the
5 restitution, he could get out of jail, okay?

6 THE COURT: So what would be the argument against
7 continuing it?

8 MR. GOMBINER: Because I think the record already
9 reflects that once Mr. Truglia was released from prison, he
10 made every effort he could to obtain the password to the
11 Bitcoin wallet.

12 THE COURT: You're going to argue that in a few
13 minutes.

14 MR. GOMBINER: Right. But—

15 THE COURT: So let's assume that argument fails.

16 MR. GOMBINER: Right.

17 THE COURT: It seems we have two arguments. One is on
18 the merits, it shouldn't be given.

19 MR. GOMBINER: Right.

20 THE COURT: And second, there's no power to give it.
21 And I ask you to focus only on the latter.

22 MR. GOMBINER: Well, Judge, I think the statute
23 authorizes contempt as a remedy when there's been a willful
24 failure to pay restitution. But in this particular case, I
25 mean, it was clear at the time of sentencing that the

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1 restitution order, which specifically provides for two lump-sum
2 payments, one of about \$12 million and one of about \$8 million,
3 that money was to come from a Bitcoin account, from a Bitcoin
4 wallet.

5 THE COURT: You're arguing the merits.

6 MR. GOMBINER: Well, I'm trying not to argue. It's
7 kind of hard to—

8 THE COURT: Look, Mr. Gombiner, I'm going to give you
9 time to argue the merits.

10 MR. GOMBINER: Okay. That was just—

11 THE COURT: The question now I want to deal with is
12 whether contempt is an available remedy if I agree with the
13 government. That's the question I'm putting to you now. And I
14 think you've answered that the statute provides for it.

15 MR. GOMBINER: In this case I don't think contempt
16 really is an available remedy because I don't think there's any
17 evidence that Mr. Truglia has any ability to purge himself of
18 the contempt.

19 THE COURT: Okay. I understand your point. It's
20 merits-oriented.

21 MR. GOMBINER: Well, it is merits-oriented. I mean,
22 if you're asking me in the abstract, do the laws provide for
23 contempt as a remedy for a failure to pay restitution, yes,
24 they do, okay, in this case, but I don't think that really gets
25 us that far. I mean, yes, that's true, but it's sort of true

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1 in an unhelpful way. The question I think you—I don't think
2 there's really any way to approach this except to say, if I
3 hold him in contempt, is there something he can do that will
4 purge the contempt, because if not, then you're just holding
5 him in jail just to punish him, which is not really an
6 appropriate use of civil contempt.

7 Let me just consult with my co-counsel for a second.

8 Okay. With the assistance of my co-counsel here, just
9 with respect to whether the Court can institute an order of
10 contempt here, I mean, we have to start with, is there an order
11 that is clear and unambiguous, okay? And I think the
12 restitution order here provides for two lump-sum payments. And
13 for the government's motion for an order to cause to succeed,
14 they also have to show that the proof of noncompliance is clear
15 and convincing. That's a legal standard. That's not just on
16 the—I mean, maybe that gets to the merits in some sense, but
17 they do have to establish that. And they have to establish
18 that Mr. Truglia has not diligently attempted to comply with
19 the order. And I don't think they've established—I think
20 there's some question as to how clear the order is, but putting
21 aside that, there's no—one of the reasons I think the order is
22 possibly not that clear is most of the government's papers are
23 devoted to the idea that he didn't make some partial payments
24 towards restitution.

25 THE COURT: We're going to get into the merits.

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1 MR. GOMBINER: Okay. But—

2 THE COURT: We're going to get into the merits.

3 MR. GOMBINER: All right.

4 THE COURT: So on the basis of this and pursuant to 18
5 U.S.C. 3613(a), (a)(1), and 3614, I hold that contempt is an
6 available remedy to obtain compliance with the order of
7 restitution.

8 MR. GOMBINER: Okay.

9 THE COURT: So let's now get into the merits, and at
10 the end of that discussion, we can then return to the question
11 of what remedy or remedies are appropriate. And I'll have
12 Mr. Capozzi lead on his argument on the merits.

13 MR. GOMBINER: All right. Thank you.

14 MR. CAPOZZI: Your Honor, the Court's restitution
15 order is clear. It was repeatedly reviewed by the defendant.
16 It was reviewed with him in open court. It was reviewed with
17 him repeatedly by his probation officer. There's no question
18 that it is clear and unambiguous.

19 He was legally obligated to pay back his victim in
20 total within 60 days, and he didn't do it. He hasn't done it.
21 The proof of noncompliance is clear and convincing. There's no
22 argument here that any payments have been made. So there was
23 an order for him to pay, and he hasn't paid. There's no
24 confusion that he has complied. He hasn't.

25 Finally, the third element they cite is whether or not

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1 the defendant has diligently attempted to comply in a
2 reasonable manner. He has not, your Honor, which is amply
3 established by the record before the Court. He has done the
4 opposite. He has hidden assets, he has fabricated documents,
5 he has refused to provide corroboration, and he has made up a
6 story.

7 So, your Honor, the defendant is and was aware of his
8 obligation. He chose not to pay his victim anything. The
9 evidence shows that he had assets other than the Bitcoin that
10 he claims he is unable to access. He had a Wells Fargo account
11 that he didn't disclose to probation, on a form that he swore
12 to under penalty of perjury, an account that he transferred
13 hundreds of thousands of dollars into. The evidence shows that
14 he had other digital assets, substantial other digital
15 assets—Zcash, other forms of cryptocurrency, nonfungible
16 tokens. Your Honor, the evidence establishes that he made
17 statements to, among others, Bennett Genovesi that he had eight
18 figures as of January of last year, which amounts to
19 \$10 million.

20 Your Honor, the evidence establishes that this
21 defendant is a sophisticated cryptocurrency thief who
22 participated in the theft of over \$20 million. They want this
23 entirely to be about this fantastical—

24 THE COURT: It should not be confused, Mr. Truglia's
25 crime, with stealing—how much money from the victim?

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1 MR. CAPOZZI: The conspiracy stole over \$20 million.

2 THE COURT: And the order to repay was the repayment
3 of the victim.

4 MR. CAPOZZI: Correct.

5 THE COURT: So first Mr. Truglia stole the money from
6 the victim, then he got himself a lower sentence by promising
7 to pay the victim in a very rapid time, and now he can't pay,
8 or he doesn't want to pay. That's the case, right?

9 MR. CAPOZZI: He has not paid. He has had assets to
10 pay, and he has not used those assets to pay. And the record
11 amply establishes that. And that—

12 THE COURT: He says he can't find the key. He says
13 that in order to open up his cryptocurrency account, which is
14 said to contain \$90 million, he needs three keys to then employ
15 his password. He says he's committed the password to memory.
16 And he says that three people have the keys. He tells a story
17 about going with Mr. McCarthy, the victim's lawyer, and
18 obtaining the key from the first confidant, and then from the
19 second confidant, but when he approached the third confidant,
20 Mr. Genovesi, the key could not be found. We don't know what
21 physical appearance it had. We don't know whether it was a
22 slip of paper or some kind of component. He couldn't find it.
23 The circumstances are such as to create an argument on your
24 part that the failure was willful and on Mr. Gombiner's part
25 that it was innocent. So I have to decide, willful or

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1 innocent. That's the issue. I don't think there's a question
2 that the order of restitution was not paid. It wasn't paid. I
3 don't think there's a question that he had a clear obligation
4 for restitution. It's embodied in a document filed in court.
5 I don't think there's any question that he obtained a lower
6 penalty, a lower term of custody because he promised
7 restitution. It's in the record. I don't think there's any
8 question that he himself proposed the schedule of repayment.
9 It's in the record. So we have to decide, was Mr. Truglia
10 dishonest and willful in refusing to find, or not being able to
11 find, the third key, or was it innocent? I'd like your advice
12 on that.

13 MR. CAPOZZI: Even holding that aside for a moment,
14 your Honor, he was willfully not paying the other assets that
15 he had. He doesn't say anything about those assets.

16 THE COURT: So what does that mean? Two things, I
17 think, I take from that. Number one, being dishonest with
18 regard to various luxury items leads one to believe that he was
19 dishonest with regard to the issue of the key. And number two,
20 if he had money, he could have paid it rather than indulging
21 himself with luxury hoodies and sneakers and jewelry. Those
22 are two things I take, both of which argue for a finding of
23 willfulness. Do you agree?

24 MR. CAPOZZI: Absolutely, your Honor.

25 And with respect to the Bitcoin, the story is

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1 incredible. It's patently incredible. I mean—

2 THE COURT: Why so?

3 MR. CAPOZZI: It has changed—

4 THE COURT: Sorry. Why?

5 MR. CAPOZZI: It has changed over time. What he said,
6 what he represented to Court versus what he represented to the
7 probation officer about where this Bitcoin was, has changed.
8 He refused to provide—

9 THE COURT: What did he say about it in the first
10 instance?

11 MR. CAPOZZI: He initially said it was online, and
12 then it was in a wallet, and then he needed information in a
13 locker, and then he needed passwords from some friends.

14 THE COURT: He kept on adding facts.

15 MR. CAPOZZI: It was always one more thing that
16 prevented him from making the payment.

17 THE COURT: Yeah.

18 MR. CAPOZZI: He refused to provide any corroboration
19 to the victim's lawyers, the names of these people who
20 apparently witnessed when he was distributing these sets of
21 seed words.

22 THE COURT: He made Mr. McCarthy, the lawyer, wait on
23 the sidewalk while he went inside, spent 15 minutes, found
24 whatever he was looking for, and came back and said, ah, I've
25 got the first part of three parts, and did the same thing with

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1 the second part.

2 MR. CAPOZZI: Correct. He provided false
3 corroboration to them. He provided a doctored trade
4 confirmation that purported to be from an entity that said,
5 this is not our record. Another effort to convince his victim
6 that he was making a good-faith effort when he was not. His
7 account is contradicted by witness testimony under oath.

8 THE COURT: Which one?

9 MR. CAPOZZI: Bennett Genovesi, who came here, swore
10 to tell the truth, and testified—

11 THE COURT: Mr. Gombiner would say he's a thorough
12 liar.

13 MR. CAPOZZI: Well, contrasted with the account of the
14 defendant, Mr. Genovesi's testimony was corroborated. There
15 were emails and text messages that show no sign that the
16 defendant was ever trying to get any hard drive or password or
17 set of keywords from Bennett Genovesi until the point that he
18 told the story to the victim's lawyers. There's hundreds of
19 text messages between the two talking about jewelry, going out,
20 this, that, the other. There's nothing about, give me the
21 keywords so I can access my \$140 million worth of Bitcoin.
22 Because he made that up. That's corroborated testimony that
23 Bennett Genovesi offered. Bennett Genovesi also testified
24 about, on the night when there was the incident at Bennett
25 Genovesi's apartment, seeing Mr. Truglia make a payment to

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1 basically the muscle that he brought with him to shake Bennett
2 Genovesi down to get his jewelry back, and that account was
3 corroborated by the defendant's financial records, which show a
4 transfer to that person, or a person by the same name.

5 So your Honor, Bennett Genovesi's testimony, first of
6 all, he swore to tell the truth; second of all, it was
7 corroborated by the other evidence that's before your Honor;
8 and finally, it's just a patently incredible story, this claim
9 that the only thing standing between him and well over a
10 hundred million dollars' worth of Bitcoin is six words that he
11 gave to Bennett Genovesi. It's just incredible.

12 And so, your Honor, if the Court holds him in contempt
13 and orders, like the Court did in *Chusid*, and keeps him there
14 until he either pays or he convinces this Court that he has
15 taken all reasonable steps available to him to satisfy his
16 obligation, then he will have that, he will have that
17 opportunity. He can come forward and show where and how and
18 explain. As of right now, the record before the Court simply
19 establishes that he's lied, he's fabricated, he hasn't paid,
20 and he is incredible.

21 THE COURT: Thank you.

22 Mr. Gombiner.

23 MR. GOMBINER: First, I think there are so many red
24 herrings here that it's practically like a school of fish. But
25 let me just try to—

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1 THE COURT: A school of red herrings.

2 MR. GOMBINER: Yes, yes. Let me just try to focus on
3 what's really transpired here.

4 Okay. When Mr. Truglia was sentenced, he told the
5 Court that he could make full restitution. Everyone understood
6 that the restitution that he was going to make was going to
7 come from a Bitcoin wallet that he had. The government
8 understood that, the probation officer understood it,
9 Mr. Truglia's lawyer understood it, and Mr. Truglia understood
10 it. Mr. Truglia's lawyer also informed the Court at the time
11 of sentencing that he couldn't make restitution immediately
12 because it would take a matter of a few weeks and other people
13 would have to be involved in it, okay?

14 THE COURT: He was out at the time, right?

15 MR. GOMBINER: No, he was in at that time. He was in
16 custody at that time. But he was going to be getting out
17 shortly. Okay.

18 THE COURT: When I sentenced him, was he in jail?

19 MR. GOMBINER: Yes.

20 THE COURT: He was in detention.

21 MR. GOMBINER: He was in detention. And that's what
22 Mr. Truglia—

23 THE COURT: So he didn't tell me that he had to be
24 released from detention to get the key.

25 MR. GOMBINER: Well, you know, I'm not sure that's not

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1 really precisely true, because what Mr. Truglia's counsel
2 said—let me just find the quote here. Mr. Truglia's counsel
3 said, well, he needs a little additional time, he said, because
4 since Mr. Truglia was incarcerated, it would take somewhat
5 longer to access the Bitcoin account, and he said, "This is
6 sensitive stuff. He can't do it himself. He can't do it
7 himself. It's a process." That's the November 30, 2022,
8 sentencing transcript at page 33.

9 Okay. The record shows that as soon as Mr. Truglia
10 got out of jail, he did start making efforts to retrieve the
11 password to the Bitcoin account. And he initially believed
12 that the device that he had provided to Mr. Genovesi, he
13 believed it was in Miami, because that's where Mr. Genovesi was
14 supposed to send all the stuff to his father. So he asked his
15 probation officer for permission to search the storage locker,
16 and he searched it for several hours but could not find the
17 device. And then later, he asked his probation officer for
18 permission to go to New York because he had given parts of the
19 password to three individuals, one of whom was Bennett
20 Genovesi, but two other people in New York.

21 He went to New York, he met with the defense lawyers,
22 he got two of the parts to the password, and then he took very
23 strenuous steps to get the third password from Mr. Genovesi,
24 including, according to Mr. Genovesi—who, I mean, I think
25 remarkably, the government continues to contend is a credible

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1 witness because Mr. Genovesi on his face is a liar and a thief.
2 I mean, he basically admitted it in court. But putting that
3 aside, according to Mr. Genovesi, he was held at knifepoint as
4 Mr. Truglia was trying to obtain the password.

5 Okay. He hasn't been able to do it, but that doesn't
6 suggest to me a lack of trying. It suggests exactly the
7 opposite. And there's absolutely nothing to suggest that
8 Mr. Truglia now has any alternative that he himself could do
9 anything else.

10 Now there is one thing that could be done here, which
11 the government surprisingly does not seem to have, even though
12 we've informed them of this months and months and months ago,
13 it was on the record back in August, that he has the password,
14 it's in a Proton email, which is held by a company called—or
15 server called Proton, which is based in Switzerland, and, you
16 know, the government—Mr. Truglia can't access that because
17 Proton has locked that account, but the government could try to
18 do that.

19 But I do want to—I think one thing that has
20 completely confused the situation is, the government seems to
21 suggest that Mr. Truglia is in violation of the restitution
22 order because he hasn't made any payments towards it and he had
23 some other money which he could have made some payment towards
24 the restitution order. But that isn't the restitution order.
25 The restitution order is, make one \$12 million payment on

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1 December 31st and make one \$8 million payment on January 31st.
2 It doesn't provide for, pay whatever you can or pay a part of
3 your monthly earnings or anything like that. It's very
4 specific. So when Mr. Truglia met with his probation officer
5 back in March, his financial disclosure form showed he had some
6 other assets. His probation officer didn't say, hey, you need
7 to pay that towards restitution, and instead he gave him
8 permission to go to New York to try to get the Bitcoin account.
9 And the reason is because the order of restitution does not
10 provide for partial payments.

11 THE COURT: That's nonsense, Mr. Gombiner.

12 MR. GOMBINER: It's not nonsense.

13 THE COURT: If you owe a hundred dollars and you have
14 50, you pay 50.

15 MR. GOMBINER: Well, Judge, the Court could certainly
16 amend—

17 THE COURT: He could go and talk to his probation
18 officer and say, look, I can't get my hands on all of this
19 money, but I can give you this, I can give \$200,000 rather than
20 indulge myself with luxury hoodies and watches and sneakers.

21 MR. GOMBINER: Judge, it is certainly possible, and it
22 should be done, I guess. The Court could certainly amend the
23 restitution order.

24 THE COURT: Did he ask for it? Did he ever come up to
25 anybody and say, look, I can't get it? He just didn't pay it.

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1 MR. GOMBINER: Judge, what happened was, in April, he
2 went to New York to try to get—

3 THE COURT: With Mr. McCarthy.

4 MR. GOMBINER: And in May he's been incarcerated, and
5 he's been incarcerated ever since. That record does not
6 reflect a willful failure to try to pay restitution; it
7 reflects exactly the opposite. The restitution order is to
8 make two lump-sum payments. It is not to pay whatever you've
9 got. I mean, maybe the order should have been written
10 differently. But it wasn't. That isn't the order. And you
11 can't violate—you can't claim that someone is violating an
12 order that doesn't exist. I mean, you know, that's just the
13 way it is. That's how the order was written. In fact, some
14 of—the thing about, if you get other assets, you have to
15 disclose those to probation, that was specifically crossed out
16 of the order. So there's no basis to say that. Everything in
17 this case was predicated on the idea that there was a Bitcoin
18 account with more than \$20 million in it. At this point the
19 account, the Bitcoins are worth about \$180 million, and the
20 idea that Mr. Truglia is, like, somehow preferring to sit at
21 the MDC rather than accessing the account where he could pay
22 the \$20 million in restitution and to date probably has about
23 \$160 million left over, that is a fantasy. And, like, I
24 understand that people are upset that this didn't work out the
25 way, you know, everybody anticipated it would work out, but

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1 that doesn't prove that Mr. Truglia has done something that
2 merits him sitting at the MDC. He did make efforts, lots of
3 efforts, to get the password to his account. They haven't
4 succeeded. And the government still has not suggested what
5 else he is supposed to do now, or could do now that would give
6 him access to that account. And obviously if there was
7 something he could do, he would do it, because then he would be
8 out of jail and extremely—he would be wealthier than all the
9 other people in this courtroom combined—well, except maybe
10 your Honor. But putting that aside, you know, that is not a
11 basis for holding him in contempt or resentencing him or
12 anything else. There's just nothing in this record that
13 establishes that Mr. Truglia has violated the terms of the
14 restitution order. The fact that he had some relatively,
15 compared to \$20 million, trivial assets that he didn't apply
16 towards restitution is not a violation of the order because the
17 order doesn't say you have to do that. The order says you have
18 to make two lump-sum payments. And as I said, everyone at
19 sentencing understood those lump-sum payments were coming from
20 a Bitcoin wallet that Mr. Truglia had, and his lawyer told the
21 Court it's a sensitive thing, it's a process, he needs to
22 have—other people need to be involved, and everyone accepted
23 that at the time. And the fact that he hasn't been
24 able—partly because Bennett Genovesi is a thief—to get the
25 password is not a basis to punish Mr. Truglia or to hold him in

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1 contempt for something that he—that there is absolutely
2 nothing he can do that will ever allow him to purge that
3 contempt. So, you know, you can keep him in jail, but it's
4 just—that's not keeping him in jail for any purpose other than
5 to punish him because people are upset that, you know, he
6 didn't do what he was supposed to, what everyone hoped he was
7 going to be able to do. Yeah, we're agreeing he didn't do it,
8 but it's not his fault that he didn't do it. And there's
9 nothing in the record to suggest otherwise.

10 I mean, I'm not even clear what the government's
11 argument is. They seem to be saying that he's making up this
12 Bitcoin account, but they don't suggest he's got any other way
13 of paying \$20 million. And at this point the government has or
14 has frozen all of Mr. Truglia's assets. They've got his
15 jewelry. His Wells Fargo account has been frozen. Mr. Truglia
16 doesn't have any other money right now. So he's told me he's
17 got maybe 2 or \$3,000. So, you know, there's nothing
18 that—there's nothing more you can get out of him right now.
19 But even if you could, that's not what the order is. And, you
20 know, it's not a technicality. Yeah, maybe in a common sense,
21 you know, general sense, yeah, if I owe you a hundred dollars,
22 I'd rather get 50. If you have an order that says, pay a
23 hundred dollars, you're not violating it because you have \$10
24 and you don't pay it. That's not a violation. And that's the
25 situation here.

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1 So I don't understand what the—there's nothing that a
2 contempt order can do other than make people maybe feel like,
3 you know, we did something, but it's not actually going to do
4 anything because Mr. Truglia doesn't have any ability to purge
5 himself of the contempt. And you cannot resentence him to
6 punish him because you think you didn't like the way things
7 were done at sentencing. A resentencing is supposed to be to
8 advance payment of restitution, and it's not going to do that
9 either. It's not. Resentencing is not some—you don't have
10 some open-ended thing where you can just say, oh, well, we're
11 mad about the way things turned out so now we're going to give
12 him a higher sentence. The statute doesn't authorize that.
13 The statute makes clear that all the remedies have to help
14 further paying restitution, and that won't help any more than
15 holding of contempt will help.

16 What I think should happen here is the Court should
17 amend, which the Court definitely has the power to do, and
18 modify the restitution order, can make clear that Mr. Truglia
19 has to use all of his available assets to pay restitution,
20 which could include anything from what the government has
21 already got in their possession, and then going forward, it
22 should require Mr. Truglia to pay some percentage of his
23 monthly income toward restitution, and if he ever does—I mean,
24 you know, obviously he would very much like to get that Bitcoin
25 account. If he does get it, then he can pay the restitution.

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1 But keeping him in jail is not going to do anything. That's
2 not the purpose of civil contempt. It's not just to say, you
3 know, we're mad so stay in jail. There's supposed to be
4 something you can do that will get you out of contempt. And
5 here, there isn't, and nobody has even suggested what there
6 would be. I mean, I would like to hear from the government
7 what they think Mr. Truglia ought to do, because if he could do
8 it, he obviously would, because he would be a rich man and out
9 of jail, instead of sitting in one of the worst detention
10 facilities in the entire country for the last six months.
11 Thank you.

12 THE COURT: Thank you, Mr. Gombiner.

13 So let's review. From the sentencing transcript of
14 November 30, 2022, at the bottom of page 30, Mr. Capozzi sets
15 the restitution, \$20,379,000.

16 I asked Mr. Udell, his lawyer: "What do you propose
17 that Mr. Truglia pay and when?"

18 Mr. Udell, at page 31: "Here's the thing, Judge. I
19 don't know if in fact Mr. Terpin," who is the victim, "has the
20 Bitcoin that he got from Mr. Penske at the time—and by the
21 way, he gave a number. He said 627 and, you know, decimal
22 point Bitcoin. If he has that today, we propose that it be the
23 22.6 gross number minus what the value of that Bitcoin is worth
24 today. That's what we propose."

25 "THE COURT: I'm asking you for a flat dollar amount,

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1 legal tender—that's dollars, not Bitcoin—"

2 "MR. UDELL: Fine."

3 "THE COURT: —your client proposes to pay the victim
4 and when."

5 "MR. UDELL: ... First of all, and Mr. Truglia has
6 made clear, you know, your Honor is going to decide the
7 restitution, he's going to accept whatever your Honor's
8 decision is both on the sentencing and, obviously, on
9 restitution. But in fairness, again... our point is just that
10 the credit should be the 22.6 minus—if he still has the
11 Bitcoin, the 22.6 minus the 10.5. I can give you the sort of
12 exact—

13 "THE COURT: Roughly \$11 million?"

14 "MR. UDELL: ... Yes."

15 "THE COURT: That's what he offers to pay?"

16 "MR. UDELL: I'm saying that's what we're respectfully
17 requesting it should be, the value of the Bitcoin backed out of
18 the 22.6. I believe it's actually... 12.1."

19 "THE COURT: 12.1. And when? He has the money?"

20 "MR. UDELL: Yes. Let me—if I can have a break to
21 talk to Mr. Truglia for a moment?"

22 "THE COURT: Yes."

23 "MR. UDELL: But I have what I believe the answer is
24 to that, but let me just confirm it with my client."

25 "THE COURT: Yes."

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1 And there's a conference with his client.

2 "MR. UDELL: Your Honor, we'd respectfully request 30
3 days, and the reason is—

4 "THE COURT: Thirty days?"

5 "MR. UDELL: Yes. So you know, obviously, he's
6 incarcerated, and it's access to a computer. This is sensitive
7 stuff. He can't do it himself. It's a process. But yes, we
8 respectfully request 30 days from date of judgment."

9 And it emphasizes it will be in US dollars, wire
10 transfers to the victim. And that's what it was.

11 Now Mr. Truglia was incarcerated at the time, right,
12 Mr. Gombiner?

13 MR. GOMBINER: Yes, he was, Judge.

14 THE COURT: And he was not going to be out in 30 days,
15 was he?

16 MR. GOMBINER: Well, it turns out he was going to be
17 out in 30 days because he got released on like December 27th,
18 so he actually got out—

19 THE COURT: The prison authorities released him. When
20 I sentenced him, he wasn't expecting to be out in 30 days, was
21 he?

22 MR. GOMBINER: Judge, you know, I wasn't there for
23 that part of it so I'm not sure what he was expecting. It's
24 not—

25 THE COURT: How many months did I give him?

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1 MR. GOMBINER: I think you gave him 18 months.

2 THE COURT: And how much was time served up to that
3 time?

4 Mr. Capozzi, do you know?

5 MR. CAPOZZI: I believe it was about a year.

6 THE COURT: He had six months to go.

7 MR. CAPOZZI: That's what I think the parties
8 understood.

9 THE COURT: The point I'm making is that he wasn't
10 going to be out in 30 days, but he obligated himself to pay
11 \$12.1 million. And let's look at the order of restitution. It
12 was I who crossed out these different clauses because they were
13 not relevant with a flat promise to pay defined amounts of
14 money.

15 Paragraph 2. "Defendant shall pay restitution in the
16 manner and according to the schedule that follows, pursuant to
17 the statute. \$12,100,000 is due and payable on or before
18 December 31, 2022, and \$8,279,007 is due and payable on or
19 before January 30, 2023." And I wrote, "Upon payment, full
20 restitution will have been made."

21 And that order was dated December 1, 2022. It was
22 signed by Mr. Capozzi, it was signed by Mr. Truglia, it was
23 signed by Mr. Udell, and it was signed by me on December 1,
24 2022. There was a flat obligation. It was an exchange, a
25 promise of specific payment without condition, without saying

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1 that he had to get keys or passwords or anything else; flat
2 obligation to pay the victim \$20 million. And if I remember,
3 he turned to the victim and he said, "I'll pay you in full."
4 Well, he didn't pay in full and he didn't pay him in part. And
5 I hold that these failures to pay were willful.

6 Mr. Truglia said to the victim, "I'm going to give my
7 best efforts to try and right my wrongs to you in any way
8 that's possible moving forward." Truglia's counsel, Mr. Udell,
9 suggested making a prompt restitution payment totaling
10 \$20,379,000, and asserted that Truglia would make payment
11 within 30 days. That's at pages 32 and 45 of the November 30
12 transcript.

13 I told Mr. Truglia, "I'm impressed by the willingness
14 that you have shown in paying back the victim." That's the
15 December 1 transcript at 15. It was evident from his
16 willingness that he had the readiness and the ability to make
17 the payment he promised to make. And I told him that this
18 readiness motivated me to sentence him well below the guideline
19 range of 51 to 63 months in custody. I sentenced Truglia to 18
20 months' incarceration and three years of supervised release,
21 for the supervised release to commence on January 6, 2023.

22 So as of today, Truglia has not paid one cent of his
23 restitution, clearly violating the promise he made at
24 sentencing without condition of any kind, the signed consent
25 order of restitution which establishes no condition of source

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1 or anything else, and his supervised release obligations.
2 Probation found that he had failed to make a good-faith effort
3 to pay the court-ordered restitution. And the proof amply
4 supports that finding. Over the past 11 months, instead of
5 paying anything to Mr. Terpin, the victim, Truglia has been
6 able to fund a lifestyle well beyond his evident means and
7 never explained to the probation officer or to the Court how he
8 could do it. Indeed, he hid his assets. Truglia's Wells Fargo
9 bank account, which Truglia omitted from his financial
10 disclosure form, represents the nut of the problem. A
11 statement in that account reflects monies coming in and out
12 from cryptocurrency platforms. All of a sudden it seems
13 Mr. Truglia found his key. It also reflects purchases for
14 luxury and nonessential goods, months after he defaulted on his
15 restitution obligation. He bought luxury sneakers, Yeezys,
16 Louis Vuitton luggage, designer hoodies, Supreme apparel, sold
17 free watches for \$92,000. Of course these assets don't amount
18 to \$20 million, but Mr. Truglia's failure to give account to
19 what he had and favoring his own indulgences over his
20 obligation to pay is indicative of his intent never to pay his
21 debt, his willfulness. This is not a case of indigence. This
22 is not a case of inability to pay. Defense counsel wrote to me
23 November 16, 2023, to the effect, "Mr. Truglia has consistently
24 acknowledged that he has sufficient means with which to make
25 restitution." Truglia has sought to portray himself as a man

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1 of wealth. He texted Bennett Genovesi that he has eight
2 figures—that means millions—to live on. And he takes photos
3 with Trezors, which are gadgets to activate cryptocurrency
4 accounts. We've heard the witnesses that supported all these
5 findings. We heard Christopher, or Chris Davis, the probation
6 officer who was supervising Truglia since January 2023. He
7 testified that Truglia was aware of his restitution obligations
8 throughout his period of supervised release. Davis testified
9 that on January 18, Truglia told him he spent three hours
10 looking for the keys to his crypto wallet in an undisclosed
11 storage unit, without success. No mention of Mr. Genovesi, or
12 of the other two fellows. At the end of March 22, 2023,
13 Truglia asked Officer Davis if he could travel to New York City
14 so he could get the keys to his crypto wallets. Davis denied
15 the request. Truglia had failed to provide documentation
16 regarding his employment and his financial information.
17 Truglia, indifferent to his obligations to his probation
18 officer, nevertheless went to New York City and told Davis he
19 could not find his wallet keys. Matt Suhocki testified as a
20 senior financial investigator for the probation office. The
21 government introduced his spreadsheet, which summarized his
22 findings with specific bank account statements. It was
23 Mr. Suhocki who showed the Wells Fargo bank account that was
24 not included on Truglia's financial disclosure form. And other
25 undisclosed transactions which I've referred to before. I take

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1 the inference from Truglia's failure to fully disclose his
2 assets a willfulness, a failure to abide obligations he took
3 upon himself. Mr. McCarthy testified that he was counsel to
4 Mr. Terpin and he went and met with Mr. Truglia on April 6,
5 2023. Truglia took him on his mission to get the codes. He
6 said he took him because he wanted corroborating evidence,
7 McCarthy did. Truglia said he had memorized the password to
8 his wallet but he needed 24 seed words to get to the point
9 where he could input his password. And he told McCarthy once
10 he could access the wallet, he would transfer the required
11 amount to McCarthy. McCarthy testified they made two stops in
12 New York City. Each time Truglia would leave McCarthy for 15
13 minutes and return with a slip of paper which he said had eight
14 words, which he claimed to be the seed words. He told McCarthy
15 that Bennett Genovesi had the final eight words, that he had
16 tried to obtain them the night before, but was unsuccessful.

17 Bennett Genovesi testified that he and Truglia were
18 nightclub friends, partied together two to three times a week.
19 In December 2021, Genovesi testified, Truglia asked him to
20 bring him a suit to the Dominick Hotel, and Truglia, instead of
21 a suit, or maybe in addition to the suit, gave him two duffel
22 bags. He asked Genovesi to mail the two duffel bags to his
23 dad, Vincent. Genovesi opened the bag and found fancy
24 deodorant, toiletries, a laptop, watch roll, and jewelry. He
25 helped himself to the jewelry.

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1 Now I find it incredible that someone having
2 \$90 million of cryptocurrency would give a password to a
3 nightclub friend whom he barely knew. I find it improbable
4 that he told Genovesi to send the duffel bags containing the
5 password to his father. If there was a password, there's no
6 reason why Truglia could not have sent that material to the
7 father directly, to his own father directly, instead of
8 entrusting it to a nightclub friend. Genovesi testified that
9 Truglia never mentioned that there was a hard drive or password
10 in the bag and that he never saw them in the bags. He
11 testified that he mailed the bags with all the contents to
12 Truglia's dad except for the items of jewelry he helped himself
13 to.

14 Vincent Genovesi said the bags came to him, but there
15 was no key or password or whatever in it.

16 I find from these accounts that it is improbable that
17 Truglia gave a valuable password to Bennett Genovesi, I find it
18 improbable that Truglia left himself without the ability to
19 gain access to \$90 million, and growing, of cryptocurrency, and
20 I find by a preponderance of the evidence that all of this was
21 a ruse to renege on his solemn obligation to the Court and to
22 the victim to pay restitution.

23 The question then comes: What is the appropriate
24 remedy?

25 I have the power to resentence Mr. Truglia. After

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1 all, he lied to me. He lied when he said he would make full
2 restitution in order to gain a better sentence. I would have
3 the power to resentence him. But Mr. Truglia has shown that he
4 prefers jail to paying his debts. And so an additional jail
5 term would mean nothing in terms of the real world of getting
6 the victim paid, and fulfilling the restitution obligations he
7 took on. The only effective remedy is contempt.

8 And I look to the precedent that Judge Kaplan set in
9 the *Chusid* case. Mr. Truglia will be sent to jail as long as
10 he does not honor his obligation to pay Mr. Terpin. That's his
11 obligation. He's in contempt of that obligation, and he can
12 purge himself instantly and avoid a jail term on the sentence
13 of contempt or he can sit in jail until he decides to pay
14 Mr. Terpin. I will defer resentencing for six months and
15 examine at that time whether it would be appropriate or not to
16 resentence Mr. Truglia, to make up for the benefit that
17 Mr. Truglia got when he lied to me or to give an appropriate
18 sanction for violation of the conditions of supervised release.
19 That is the order of the Court.

20 Mr. Capozzi, have I missed anything?

21 MR. GOMBINER: Judge, can I just consult—

22 THE COURT: I'll ask you.

23 Yes. Mr. Capozzi?

24 MR. CAPOZZI: No. I believe that adequately
25 establishes a basis for the contempt and to set a six-month

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1 return for reconsideration of resentencing.

2 THE COURT: It would be better if you spoke louder and
3 not on your way to standing up or sitting down.

4 Mr. Gombiner, do you want to say something?

5 MR. GOMBINER: Judge, with respect to the contempt
6 sanction, is the Court's order that Mr. Truglia can purge
7 himself of contempt by paying whatever money he has or is the
8 Court's order that he can purge himself of contempt by paying—

9 THE COURT: Paying what he promised to pay. Because I
10 don't believe that he doesn't have access, for the reasons that
11 I explained—his dishonesty throughout, his finding of more
12 reasons not to pay, and the improbability of his stories.

13 MR. GOMBINER: Well, I mean, I don't want to reargue
14 the whole thing, but—given the government's position that this
15 Bitcoin account, while it is—that Mr. Truglia does not in fact
16 own that Bitcoin wallet, there's no one else has
17 identified—and they can't because it doesn't exist—no one
18 else has identified any other way he could pay \$20 million. So
19 I'm not sure how he's ever—he's never going to be able to
20 purge himself of this order.

21 THE COURT: Well, that wasn't his position when
22 he—sorry. Are you finished?

23 MR. GOMBINER: So all I'm saying, Judge, is, like, he
24 doesn't have any way to access the Bitcoin wallet other than
25 what he's done, and no one else has suggested what else he's

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1 supposed to do, and he doesn't have any other money, so he's
2 never going to be able to satisfy the contempt order.

3 THE COURT: Well, that's what you say, but it's not
4 what I believe.

5 MR. GOMBINER: Okay. Well, Judge, he's already been
6 sitting there for six months. He hasn't done it now. What's
7 changed?

8 THE COURT: Thank you, Mr. Gombiner.

9 Mr. Capozzi.

10 MR. CAPOZZI: Your Honor, just the one question. In
11 *Chusid*, Judge Kaplan did have the alternative of—

12 THE COURT: I'm getting to that.

13 MR. CAPOZZI: Okay.

14 THE COURT: Mr. Truglia is ordered to be incarcerated
15 until such time as he satisfies his obligations to make
16 restitution or establishes to the satisfaction of the Court
17 that he has taken all reasonable, bona fide steps available to
18 him to satisfy his restitution obligations, to paraphrase from
19 *United States v. Chusid*, 372 F.3d 113 (2d Cir. 2004), affirming
20 Judge Kaplan, and that discussion is at page 116-117.

21 Okay, folks. We will reconvene for an adjourned
22 resentencing, at September 17, at 11 a.m., or such sooner time
23 as I'm advised that Mr. Truglia has paid his restitution
24 obligations or on application by his counsel showing that he
25 has taken all reasonable, bona fide steps available to him to

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1 satisfy his restitution obligations.

2 MR. FLOOD: Could I be heard, Judge?

3 THE COURT: You may, Mr. Flood. Always. I would
4 never cut you off.

5 MR. FLOOD: I appreciate that, and I'll be brief.
6 Just for clarity of our understanding of—yes, sir. I'll go to
7 the podium.

8 Thank you, sir. Just for the purposes of our
9 understanding of the state of the record, the Court has found
10 Mr. Truglia in contempt on the record before the Court. That's
11 a final order. But with regard to the resentencing and
12 violations of supervised release, the case is adjourned,
13 continued to—I heard a proposed date. I didn't know exactly
14 what it was. I think it was in September.

15 THE COURT: That's adjourned to September 17, at
16 11:00, or such sooner time, as I said before.

17 MR. FLOOD: Assuming the theoretical possibility that
18 the contempt is purged by complete payment of—

19 THE COURT: Or application by counsel in the way I
20 said.

21 MR. FLOOD: I understand. But with regards to the
22 contempt order, just so we understand the appellate record to
23 the extent that we could pursue appellate remedies, that the
24 order of holding him in contempt is final as of today.

25 THE COURT: I don't understand what you're saying,

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1 Mr. Flood.

2 MR. FLOOD: I can review the record, your Honor, but
3 the Court has utilized a number of different tools procedurally
4 before today. I'm just trying to discern what is final and
5 what isn't.

6 THE COURT: I ordered the contempt.

7 MR. FLOOD: Yes.

8 THE COURT: Final.

9 MR. FLOOD: Understood.

10 THE COURT: I put off the question of resentencing—

11 MR. FLOOD: Yes.

12 THE COURT: —and/or violation of supervised release.

13 MR. FLOOD: Understood. So that's really all I wanted
14 to clarify, your Honor.

15 THE COURT: Sorry?

16 MR. FLOOD: Thank you.

17 MR. GOMBINER: Thank you, Judge.

18 THE COURT: Okay. Anything further?

19 MR. CAPOZZI: No, your Honor.

20 THE COURT: Thank you, folks.

21 MR. GOMBINER: Thank you, Judge.

22 o0o